

24



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,784	08/04/2003	Dirk Vorsteher	1003-0055	6881

7590 01/31/2006

Joel H. Bock
Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams Street, Suite 2850
Chicago, IL 60606

EXAMINER

DEUBLE, MARK A

ART UNIT	PAPER NUMBER
----------	--------------

3651

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/633,784	Applicant(s) VORSTEHER ET AL.	
	Examiner Mark A. Deuble	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8-10,12,14,19 and 21 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8-10,12,14,19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-5, 8-10, 12, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of Bandy Jr. (U.S. 6,401,912).

Bandy, Jr. et al. shows a conveyor pan for underground face or gate conveyors that has a pair of cast side parts 13 and 14 each of which includes vertical arms 25/26 extending over a height of the bottom and top runs of the conveyor. At the bottom side of the vertical arm, a lower case flange arm extends outwards to the rear and a foot flange extends inwards to a base plate 25 that is welded to the bottom of the foot flange to close the bottom run of the conveyor. Accepting elements formed by open edged cast pocket slots 21 are formed in the vertical arms of the pans to engage tongue shaped segments 20 on the long sides of the conveyor pan base 11. The tongue shaped segments are welded to the outer sides of the side parts at 21 and 22. At the top of the side parts, the cast vertical arms have an integral end section with a generally T-shaped cross section that could be used as a machine track for an extraction machine with the upper side of the T forming a cross web of the machine track. At the outer sides of the side parts, cast vertical ribs are formed between the pockets and the ends of the pan in the toggle accepting slots (see Figs. 1 and 2). Thus Bandy Jr. et al. shows all the structure required by claims 1, 4-5, 12, and 14 except for the side and top profiles which are exhanngably welded onto the vertical arms

adjacent the machine track. However, it should be noted making parts integral or separable has held to be obvious design choice. See *In re Larson*, 340 F.2d 965, 144 USPQ 347, 349 (CCPA 1965) (A claim to a fluid transporting vehicle was rejected as obvious over a prior art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured together as a single unit. The court affirmed the rejection holding, among other reasons, "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice."); and *In re Dulberg*, 289 F.2d 522, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.").

Additionally, Bandy Jr. et al. does not disclose how the conveyor base is formed. Bandy Jr. '912 teaches that the conveyor base 26 can advantageously be fabricated of mild rollers steel to reduce the cost of the conveyor. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the conveyor base 11 of Bandy Jr. et al. of rolled steel to reduce the cost of the conveyor as taught by Bandy, Jr. '912. When this is done, the resulting conveyor pan would have all the structure required by claims 4 and 19.

In response to this rejection, Applicant argues Bandy, Jr. et al. does not show lower cast flange arm extending outwardly to the rear as required by the claim. The Examiner respectfully disagrees. While the lower cast flange arm does not extend as far outwards and rearwards as the

part 11 illustrated in Fig. 1 of the present application, the lower left corner of the lower cast flange arm clearly extends outwardly from its point of attachment to the deck plate 11 as can be seen in Fig. 3.

Applicant also argues that it would not have been obvious to exchangeably weld the side and top profiles onto the vertical arms of the conveyor pan. In regard to the obviousness of exchangeably welding the side and top profiles onto the vertical arms adjacent the machine track. Specifically, applicant argues that exchangeably welding the top and side profiles is different than merely making the parts integral or separate because the claim calls for both side and top profiles which are exchangeably welded onto the vertical arms. The Examiner respectfully disagrees. The claim does not require separate top and side profiles as suggested by the Applicant. While it required two profiles exchangeably welded onto the vertical arms on both sides of the pan adjacent the machine track, these profiles could be single members covering both the side and top of the top run of the conveyor pan (ie. a single part called a top and side profile). These side and top profiles have the same general shape as the vertical arms of Bandy Jr. et al. and the only functional advantage gained by the exchangeably welded profiles is they are removable. This situation is analogous to the integral or separable cases discussed above.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of Gehle et al. (U.S. 4,373,757), Merten et al. (U.S. patent No. 5,601,341), or Fischer et al. (U.S. Patent No. 5,938,000).

Bandy Jr. et al. shows generally all the structure required by claim 15 except for the cast vertical ribs provided with cut-outs onto which lifting eyes or similar are fastened. However, Gehle et al., Merten et al., and Fischer et al. all teach that vertical ribs having cut outs forming

Art Unit: 3651

lifting eyes may advantageously be added to the sides of a conveyor pan to strengthen the pan and to facilitate handling of the pan. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the conveyor pan of Bandy, Jr. et al. with such vertical ribs.

Allowable Subject Matter

4. Claim 21 is allowed.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md



GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER